

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #4	CCRB Case #: 201600123	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/04/2016 4:37 PM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 7/4/2017	EO SOL 7/4/2017	
Date/Time CV Reported Wed, 01/06/2016 3:10 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 01/06/2016 3:10 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Martin	24921	941068	046 PCT
2. POF Nadine Nazario	16704	955252	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Martin	Abuse: PO Kevin Martin threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
B.POM Kevin Martin	Abuse: PO Kevin Martin frisked § 87(2)(b)	§ 87(2)(b)
C.POM Kevin Martin	Abuse: PO Kevin Martin searched § 87(2)(b)	§ 87(2)(b)
D.POF Nadine Nazario	Abuse: PO Nadine Nazario searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
E.POM Kevin Martin	Abuse: PO Kevin Martin refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)
F.POM Kevin Martin	Off. Language: PO Kevin Martin made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)

### Case Summary

On January 6, 2016, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

At approximately 4:37 p.m. on January 4, 2016, § 87(2)(b) parked in front of a driveway located at § 87(2)(b), in the Bronx. He sat in his car playing a game on his phone while waiting for his wife, § 87(2)(b) to come meet him. A short time later, a marked RMP pulled up behind § 87(2)(b). The two officers inside, PO Kevin Martin and PO Nadine Nazario of the 46<sup>th</sup> Precinct, sat in the RMP for several minutes before exiting and approaching § 87(2)(b). PO Martin, referring to § 87(2)(b)'s phone, stated, "Put it away before I break it" (**Allegation A**). He then ordered § 87(2)(b) to exit the car. Once § 87(2)(b) stepped out, PO Martin frisked and searched him (**Allegations B and C**). Nothing was found on § 87(2)(b) was moved to the rear of his car. PO Nazario then entered § 87(2)(b)'s car and searched the interior (**Allegation D**). Nothing was found in the car. § 87(2)(b) complained to PO Martin about being stopped. PO Martin replied, "You should go back to where you come from" (**Allegation E**). PO Nazario then issued § 87(2)(b) a summons for blocking the driveway. PO Martin handed the summons to § 87(2)(b) asked PO Martin for his name and shield number. PO Martin replied that his information was written on the summons (**Allegation F**).

### Video Footage

§ 87(2)(b) recorded a twenty-second clip of the incident on her cell phone. The footage shows § 87(2)(b) speaking to PO Martin at the rear of his car while PO Nazario leans into the front seat of his vehicle (See Board Review #1: Video Footage). There are no body-worn cameras assigned to officers from the 46<sup>th</sup> Precinct, and no exterior cameras were noted at the location.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) intends to file a lawsuit regarding the incident. The case is therefore ineligible for mediation.
- A notice of claim request was sent to the Comptroller's office on March 23, 2016. It will be included in the case file upon receipt.
- § 87(2)(b) [REDACTED].
- § 87(2)(b) [REDACTED].
- § 87(2)(b) [REDACTED].

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or involving § 87(2)(b) (See Board Review #3: Civilian CCRB History).
- PO Martin has been a member of the service for ten years, and there are nine substantiated CCRB allegations against him.

- In case #201101547, stop and frisk allegations were substantiated against PO Martin. No disciplinary action was taken, as the investigation passed the statute of limitations.
- In case #201114083, a stop allegation was substantiated against PO Martin. Prosecution was declined against him.
- In case #201205296, force, threat of arrest, discourtesy, frisk, search and stop allegations were substantiated against PO Martin. He was also found to have provided a false official statement regarding the incident. He received charges.
- PO Nazario has been a member of the service for two years, and there is one substantiated CCRB allegation against her. In case #201405312, a search allegation was substantiated against her. She received a command discipline. This is the first vehicle search allegation pleaded against her.

### **Findings and Recommendations**

#### **Allegations Not Pledaded**

- **Abuse of Authority:** A stop allegation has not been pleaded because it is undisputed that § 87(2)(b) was parked in a position that blocked a driveway. He was later issued a summons for this offense.

#### **Allegation A –Abuse of Authority: PO Kevin Martin threatened to damage § 87(2)(b) s property.**

§ 87(2)(b) provided a telephone statement on January 19, 2016, and was interviewed at the CCRB on January 28, 2016. He also filed a notice of claim regarding the incident, but it does not list the date that it was filed on (See Board Review #4: § 87(2)(b) s Testimony). In his interview, he stated that he was playing a game on his cell phone when the officers first approached his vehicle, and continued doing so as PO Martin started to speak to him. He stated that PO Martin referred to his phone, telling him, “Put it away before I break it.” § 87(2)(b) then put his phone aside. He made no mention of this during his telephone statement or notice of claim.

PO Martin was interviewed at the CCRB on March 8, 2016 (See Board Review #5: MOS Statements). PO Martin also stated that § 87(2)(b) was playing on his cell phone when he first spoke to him. He asked § 87(2)(b) to put the phone aside. § 87(2)(b) complied with this request. PO Martin denied threatening to break or damage § 87(2)(b) s phone, or any of his other belongings.

PO Nazario was interviewed at the CCRB on February 10, 2016 (See Board Review #5: MOS Statements). She did not recall § 87(2)(b) handling a phone at any time during the incident. She did not recall any conversations with § 87(2)(b) about a phone, and did not recall PO Martin threatening to break or damage any of § 87(2)(b) s belongings.

§ 87(2)(b), § 87(2)(g)

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**Allegation B –Abuse of Authority: PO Kevin Martin frisked § 87(2)(b)**

It is undisputed that PO Martin asked § 87(2)(b) to step out of his car, and that he was eventually issued a parking summons for blocking a driveway. It is also undisputed that § 87(2)(b) did not make any movements or reach anywhere inside of his car while PO Martin and PO Nazario were present.

§ 87(2)(b) stated that he was calm throughout the incident, and did not raise his voice to the officers. He made no mention of either of the officers telling him to move his vehicle from the driveway before he was told to exit the car. He denied that PO Martin frisked him at any point, but did allege that PO Martin searched his pants pockets.

§ 87(2)(b)'s wife, provided a telephone statement on February 3, 2016 (See Board Review #6: § 87(2)(b)'s Statement). § 87(2)(b) was not present during the officers' initial approach, but was present when § 87(2)(b) stepped out of the car. She stated that PO Martin both frisked and searched § 87(2)(b) at that time. PO Martin did not remove anything from § 87(2)(b)'s person at that time.

PO Martin and PO Nazario, however, both stated that PO Martin frisked § 87(2)(b) once he exited the car. PO Martin stated that he had asked § 87(2)(b) several times to move his car to unblock the driveway several times before he was instructed to leave the car. § 87(2)(b) ignored PO Martin's request, but remained calm and did not raise his voice while speaking to PO Martin. PO Martin then ordered § 87(2)(b) out of the car. He explained that he then frisked § 87(2)(b) because it is standard procedure to check a person for weapons whenever they are being issued a summons. At that time, he intended to issue § 87(2)(b) a parking summons for blocking the driveway, as well as a criminal summons for idling for more than three minutes, which is a violation of the city's Administrative Code. PO Martin did not suspect that § 87(2)(b) was armed at the time. He stated that he had reviewed § 87(2)(b)'s criminal history on a department phone before the frisk, and found that § 87(2)(b) had been arrested in the past for violent offenses. He did not recall what any of these offenses were, but stated that the last arrest had occurred "several" years earlier.

Like PO Martin, PO Nazario stated that PO Martin told § 87(2)(b) to move his car several times before he was asked out of the vehicle. PO Nazario, however, stated that § 87(2)(b) immediately became agitated, and was shouting at PO Martin while moving both of his hands in front of his chest in an animated fashion. PO Nazario felt that § 87(2)(b)'s extreme reaction was an unusual response to a relatively minor parking infraction. Based on this reaction, PO Nazario suspected that § 87(2)(b) might have been carrying a weapon at the time. She did not cite any other factors, including § 87(2)(b)'s criminal history, as contributing to this suspicion.

While § 87(2)(b) specified that PO Martin searched him, but did not frisk him, § 87(2)(b) PO Martin and PO Nazario all stated that PO Martin did frisk § 87(2)(b). As such, the investigation has determined that § 87(2)(b) was in fact frisked.

While issuing a summons for a traffic infraction, an officer may only frisk an individual if he or she has a reasonable suspicion that the individual is armed. People v. Barreira, 191 A.D.2d 153 (App. Term., 1<sup>st</sup> Dept., 1993).

§ 87(2)(b), § 87(2)(g)

Under Barreira, committing a violation does not allow for officers to conduct frisks incident to the issuance of a summons.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation C –Abuse of Authority: PO Kevin Martin searched § 87(2)(b)**

§ 87(2)(b) alleged that after he stepped out of his car, PO Martin searched him by reaching into his pants and jacket pockets. PO Martin removed a wad of cash from § 87(2)(b)'s front-left pants pocket, examined it, and then placed it back inside of the pocket. No belongings were taken from § 87(2)(b) during this search.

§ 87(2)(b) also stated that PO Martin searched § 87(2)(b)'s pockets, but did not mention any items being removed from § 87(2)(b)'s person. This portion of the incident was not captured on the video taken by § 87(2)(b).

While PO Martin and PO Nazario both stated that PO Martin frisked § 87(2)(b) after he stepped out, both denied that PO Martin reached into any of § 87(2)(b)'s pockets. They denied that any objects were removed from § 87(2)(b)'s person, including any cash.

§ 87(2)(b), § 87(2)(g)

**Allegation D –Abuse of Authority: PO Nadine Nazario searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that an officer searched § 87(2)(b)'s vehicle, and that nothing was removed from its interior. It is also undisputed that § 87(2)(b) was standing at the rear of his vehicle when the search was conducted. The search was captured on § 87(2)(b)'s cell phone video.



201600123 - Cell Phone Video.3gp

§ 87(2)(b) and PO Martin all stated that PO Nazario searched the interior of the vehicle. In his telephone statement, § 87(2)(b) stated that she searched underneath the front seats and in the glove compartment. In his interview, he also stated that she searched the center console. § 87(2)(b) stated that she searched the glove compartment, the center console, and two large pockets mounted on the back of the front seats.

PO Martin stated that after he frisked § 87(2)(b) he instructed PO Nazario to search the “lungeable, grabbable” areas inside of the car to check for weapons. He had not observed any suspicious items in the car, and had not seen § 87(2)(b) reach towards any areas inside of the car at any time. PO Martin did not see what specific areas of the car that PO Nazario searched, stating that he was busy talking to § 87(2)(b) at the time.

PO Nazario initially denied entering the vehicle herself. She stated that after PO Martin frisked § 87(2)(b) he entered the car’s driver’s seat and searched underneath the two front seats. He did not open any closed containers, including the center console or glove compartment. When PO Nazario was shown the above video footage recorded by § 87(2)(b) she identified PO Martin as the uniformed officer standing at the rear of the vehicle. When asked who the officer seen leaning into the front passenger’s seat was, she stated that she could not tell, as the officer’s face was obscured. When asked if this was her, PO Nazario stated that she had no explicit recollection of having entered into the vehicle at any time.

Under the general automobile exception, an officer requires probable cause to believe that a vehicle contains evidence or contraband in order to conduct a warrantless search. Officers are also permitted to conduct a limited vehicle search to retrieve a weapon inside if they reasonably believe that it poses an immediate threat to their safety. This exception, however, does not apply when the suspect has already been removed from the vehicle and no longer has access to the weapon. *People v. Torres*, 74 N.Y.2d 224 (1989) (Board Review: Legal Reference).

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

**Allegation E –Offensive Language: PO Kevin Martin made remarks to § 87(2)(b) based upon race.**

In his telephone statement, § 87(2)(b) stated that PO Martin told him, “You shouldn’t be here, you’re not even a citizen. You should be where you came from.” In his interview, § 87(2)(b) stated that PO Martin told him, “You should go back to where you come from.” In his notice of claim,



Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date